

BEFORE THE LAND USE HEARINGS OFFICER  
CLACKAMAS COUNTY, OREGON

Regarding an Appeal of a Planning Director Decision Approving an Application for a Variance to Reduce a Property Setback for a Rural Commercial Zoned Property.

Case File No: Z0117-22-V  
(Parr Lumber)

**A. SUMMARY OF FINDINGS, HEARING, AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony and evidence at the August 18, 2022 public hearing about this application. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform due to the coronavirus, with the County providing an explanation for virtual participation. At the beginning of the hearing the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the County's staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. The applicant is Parr Lumber. The applicant is seeking a variance to certain setback requirements in order to replace two existing sheds at one of its retail locations located within Clackamas County near the intersection of SW Stafford Road and SW Borland Road, with a larger single shed. The existing sheds encroach within a setback standard required due to the location of the subject property adjacent to residential zoned property, and the application is seeking a variance to locate its proposed new shed within the setback in roughly the same location on the parcel. The subject property is zoned Rural Commercial (RC) and is surrounded by properties that are zoned Rural Residential Farm Forest 5-Acre (RRFF-5), a residential zoning district. The site is within the Stafford Tualatin Community Planning Organization (CPO).
3. At the hearing, County Planning Manager Lindsey Nesbitt discussed the staff review of this application for a zoning variance. Ms. Nesbitt shared a PowerPoint presentation prepared for this hearing. In her presentation, Ms. Nesbitt provided relevant background information concerning the application, the County's review of the application per the County's Zoning and Development Ordinance (ZDO) and Comprehensive Plan, and the approval of the application by former County Planner Andrew Yaden. Ms. Nesbitt shared an aerial photograph of the Parr Lumber site, highlighting an area along the north side of the site near the rear (east end) of the property with two existing sheds. Ms. Nesbitt also showed a slide of the two existing open-sided sheds, showing their location along the rear side of the Parr Lumber site backing to what appears an undeveloped field immediately adjacent to the intersection of SW Stafford Rd. and SW Borland Rd. Ms. Nesbitt explained that the applicant proposes to remove these two structures and construct an open-sided storage structure along this east portion of the north side of the property. The photograph shows an area of dense vegetation and a canopy of trees in the setback area behind the two existing sheds, and along the entire back of the site, screening the Parr Lumber property from the adjacent properties.

4. Ms. Nesbitt's presentation included a slide showing an example of a newer open-sided shed used to store materials at another Parr Lumber site as an example of the type of shed the applicant intends to replace the existing sheds with. The new model of shed appears taller, deeper, and wider than either of the existing sheds, and appears upgraded with lighting fixtures. The newer shed appears constructed of steel, whereas the existing sheds appear constructed of wood or a combination of wood and concrete.
5. Ms. Nesbitt's presentation included a slide showing the zoning districts within an approximately two mile radius of the Parr Lumber site. This slide shows two RC zoned properties – the Parr Lumber site and a nearby site known as “Wanker’s Corner” located across the intersection of SW Stafford Rd. and SW Borland Rd. Most of the area properties are zoned Rural Residential Farm Forest 5 acres (RRFF-5), with some Exclusive Farm Use (EFU) properties to the east.
6. Ms. Nesbitt discussed how the new proposed structure is 25 feet wide by 125 feet in length. She noted that the applicant submitted this variance application to reduce the side yard setback from 20 feet to 10 feet. The north property line is a side lot line per ZDO Section 202, *Definitions*. Table 513-2 in ZDO Section 513, *Rural Commercial Zoning Districts*, provides that the side yard setback standard is 10 feet. However, subnote 6 provides that the setback from a property line that abuts a residential zoning district is 20 feet. The adjacent property is zoned RRFF-5, which is a residential zoning district. Therefore the 20 foot setback standard applies. Ms. Nesbitt pointed to the uniqueness of the site's physical characteristics, improvements, and use as not typical to the area. Ms. Nesbitt further pointed to the location of the site as adjacent to larger RRFF-5 properties, and the requirements of the related standard for an increased setback, supporting the finding that the Parr Lumber property cannot be developed to an extent comparable with other properties in the area if this standard for the increased setback is satisfied. Approval of the application will allow the applicant to place the new storage shed to the 10 foot side yard setback standard. The full 20 foot setback will continue to apply to the remainder of the side and rear areas of the site.
7. Ms. Nesbitt's PowerPoint presentation included the site plan submitted by the applicant showing the site for the shed and showing that the entire Parr Lumber site is developed with buildings and storage. Ms. Nesbitt noted that the existing trees and other vegetation within the 10-foot setbacks for the site and adjacent properties effectively screen the existing sheds and much of the Parr Lumber site (particularly the storage areas in back) from the view of adjacent properties and notes that staff review indicates that the shed being proposed by the applicant will remain largely screened from view. Ms. Nesbitt further states that approval of the variance will not impose any limitations on other properties and uses in the area, and approval of the application will result in the minimum variance needed to alleviate the hardship.
8. Ms. Nesbitt also addressed part of the appeal submitted concerning the County's approval of this application for a variance, with a slide in her PowerPoint presentation citing Oregon Administrative Rules (OAR) 660-027-0070 (2), which provides:

“In order to maintain opportunities for orderly and efficient development of urban uses and provision of urban services when urban reserves are added to the UGB, counties shall not amend comprehensive plan provisions or land use regulations for urban

reserves designated under this provision to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as urban reserves until the reserves are added to the UGB.”

9. Ms. Nesbitt explained that the cited OAR and the intergovernmental agreement referenced by the appellant restrict the County from adding or allowing new uses to the zoning ordinance, but does not affect existing uses. Ms. Nesbitt also noted that the County’s 2010 zoning ordinance, in effect at the time the intergovernmental agreement was reached, has not been amended to add any new uses. Rather, Ms. Nesbitt states that the relevant County ordinance for the RC District organizes the allowed uses in Table 513-1, which includes the retailing of building materials, hardware, and tools, as sold at the Parr Lumber site.
10. Randall Yamada, representing the Stafford Tualatin CPO, submitted the appeal of the County’s approval of this application and provided testimony and argument in support of the appeal. Mr. Yamada referenced written comments he submitted in advance of the appeal and discussed the CPO’s concerns with the approval of this application. The appeal form submitted by Mr. Yamada described the reason for the appeal as: “Review of conformance to zoning ordinance conditions established by the Comprehensive Plan – Land Use Section.” Mr. Yamada explained that the concern here is that approval of the variance not result from changes to the ZDO or add to uses authorized at the time the Stafford Area Five Party Intergovernmental Agreement was adopted.
11. Mr. Yamada provided additional explanation and context for the appeal at the hearing. Specifically, Mr. Yamada points to the Stafford Area Five Party Intergovernmental Agreement (the intergovernmental agreement also referenced by Ms. Nesbitt) as establishing March 3, 2010 as a date beyond which the County cannot amend its ZDO or allow new uses within the Urban Reserve Areas, including the Parr Lumber site. Mr. Yamada expressed concern that approval of this application effects a change in the County’s ZDO. Mr. Yamada discussed how a review of the County’s related ZDO provisions from 2010 when the agreement went into effect shows that Tables 513-1 and 513-2 in the current version did not exist at the time of the intergovernmental agreement, asserting that this was a change in the ordinance. Mr. Yamada also pointed to the application as not clearly limiting the requested variance to the minimum setback needed for the shed. Mr. Yamada referenced searches he made and requests he made to obtain records showing that the improvements to the Parr Lumber site were originally authorized with 10 foot setbacks, but no such documents were found or provided. Mr. Yamada also notes that the Parr Lumber property is a large flat site, questioning the findings that there are physical characteristics of the land not typical of the area, and questioning the findings concerning the need to utilize the setback area of the property for siting of the proposed shed.
12. Mr. Yamada further pointed to dimensional standards in the ZDO limiting the maximum building floor space per commercial use outside an unincorporated community within the RC zone to 3,000 square feet, and a referenced subnote 8 in Table 513-2 should not apply.<sup>1</sup> Mr. Yamada noted that the Parr Lumber facility is already developed in excess of 3,000 square

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<sup>1</sup> Subnote 8 to Table 513-2 provides: “A lawfully established commercial use that existed on December 20, 2001, may expand to occupy a maximum of 3,000 square feet of building floor space or 25 percent more building floor space than was occupied by the use on December 20, 2001, whichever is greater.”

feet of building floor space and asserts that the proposed new shed would also exceed this amount, thus the application should also request a variance to the maximum buildable area. Mr. Yamada further noted that while he is not personally opposed to the Parr Lumber proposal, the CPO needs to ensure that the County's land use actions are consistent with the ZDO, Comprehensive Plan, and the intergovernmental agreement.

13. Schwabe Williamson & Wyatt attorney Joe Gaon appeared on behalf of the applicant Parr Lumber and provided background and legal argument in support of approval of the variance application. Mr. Gaon pointed to the original incomplete application in this matter for verification of a pre-existing non-conforming use and a variance, and that after discussion with County Planning Staff concerning the non-conforming use, Parr Lumber decided to proceed separately with the variance application for the side setback. Mr. Gaon points to Condition 3 of the County's approval of this application, referencing that the approval of the variance reducing the side setback requirement from the eastern portion of the north side property line to 10 feet is only for the portion as shown on the applicant's May 11, 2022 site plans. Mr. Gaon explains that the County approved the variance only for the portion of the setback shown on the site plan for the proposed shed.
14. Mr. Gaon addressed the appellants arguments and comments concerning the intergovernment agreement, asserting first that the agreement concerns only *new uses* and does not mean that the County's ZDO is static and cannot be amended from the 2010 version. Further, Mr. Gaon points to the Countys 2007 ZDO and its dimensional standards in section 505.08(i)(2) that contain the same language as subnote 8 in Table 513-2 referred to by the appellants. Mr. Gaon also pointed out that this hearing concerns the variance application and not the building dimensional standards for the property.
15. Mr. Gaon referenced that Parr Lumber has notified its neighbors of this proposal and requested information on whether the neighbors would support Parr's request. To date, Parr Lumber has received two responses, including one response from its nearest neighbor (i.e., the neighbor that would be most affected by this proposal), voicing support for the proposal.
16. Ms. Nesbitt provided some clarification of the County's position concerning the Stafford Area Five Party Intergovernmental Agreement, agreeing with Mr. Gaon's assertion that the ZDO is not static to the March 3, 2010 date or that the County cannot amend its ZDO as it has done. Ms. Nesbitt describes the agreement as a restriction concerning allowing any new uses or any smaller land sizes within the Urban Reserve Areas. Ms. Nesbitt further agrees with Mr. Gaon's characterization of the variance application and the County's related Condition of Approval 3 as only approving the placement of the proposed building/shed within the 20 foot setback and not within the 10 foot setack area, as shown in the applicant's submitted site plan.
17. Mr. Yamada reiterated his uderstanding that the intergovernmental agreement provides that the ZDO will remain the same, unchanged from its 2010 version.
18. County records submitted for this hearing show that a Variance application was submitted concurrently with a Nonconforming Use Verification/Alteration (NCU). A pre-application conference was held to discuss the nonconforming use application process on October 22, 2021. The NCU application is currently deemed incomplete. The variance application was deemed complete on March 30, 2022. The applicant submitted a request to "toll the clock" the

next day, requesting a tolling until June 6, 2022. The clock was restarted by the applicant on May 11, 2022 with the submittal of additional materials in support of the application. Notice to adjacent property owners and service providers was mailed May 12, 2022. The applicant provided copies of the two responses it received in support of the application. The County did not receive any correspondence in opposition to the approval other than those submitted by Mr. Yamada on his own behalf and on behalf of the Stafford Tualatin Valley CPO.

19. Applicant's pre-hearing response submitted by Mr. Gaon included, among other things, a description of the development of this Parr Lumber site. Mr. Gaon referenced that the applicant has operated a Parr Lumber retail store at the subject property since approximately 1976. The County approved a design review application in 1992 that allowed the applicant to upgrade an existing building at the site, approving the proposed 14,160 square feet of building floor space on the site, including the two sheds located on the northeast corner. Mr. Gaon also referenced a 1997 design review application approving an additional 1,360 square feet of lumber storage, and a 2005 design review application approving a 12' x 42' office trailer.
20. The Hearings Officer asked whether any party or member of the audience wanted an opportunity to provide additional evidence, arguments, or testimony, and no one requested this opportunity. Mr. Gaon affirmed that the applicant wished to waive the period for final written argument. The hearings officer closed the hearing, stating that the record would close at 4:00 pm that day to allow for submission of the discussed exhibits.

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## **B. FINDINGS AND DISCUSSION**

This case involves the appeal of a Planning Director decision approving an application for a variance to reduce the setback for a Rural Commercial zoned property located adjacent to a residentially zoned property. The proposed reduction from 20 feet to 10 feet is to accommodate the siting of a covered storage area for lumber materials. The application was initially processed by the County under ZDO Section 1307 as a land use permit for a variance, a Type II procedure whereby the Planning Director is the initial decision review authority, and the Hearings Officer is the appeal review authority.<sup>2</sup> The Planning Director<sup>3</sup> approved the application and this appeal followed.

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. The appeal discussed below is reviewed subject to the appeal procedures contained in ZDO 1307.13. These procedures provide for de novo review of the application whereby all issues of law and fact are heard anew, and no issue of law or fact decided by the lower-level review authority is binding on the parties in the hearing. The record of the initial proceedings shall, however, be made a part of the record of the appeal. New parties may participate, and any party may present new evidence and legal argument by written or oral testimony.

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, 513, and 1205; and the Comprehensive Plan. Clackamas County Land Use and

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<sup>2</sup> See Table 1307-1: Land Use Permits by Procedure Type.

<sup>3</sup> ZDO 1307.3(B) provides that the Planning Director includes "Any County staff member authorized by the Planning Director to fulfill the responsibilities assigned to the Planning Director by the [ZDO]." Former County Planner Andrew Yaden acted in this capacity.

Zoning Staff reviewed these Sections of the ZDO in conjunction with this proposal and makes the following findings and conclusions, reviewed, adopted and/or modified by the Hearings Officer:

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## SECTION 1 – BACKGROUND

### Project Overview:

The applicant proposes to remove two structures and construct an open-sided storage structure along the east portion of the north side of the property. The new structure will be 25 feet wide by 125 feet in length.<sup>4</sup> The applicant submitted this variance application to reduce the side yard setback from 20 feet to 10 feet. The north property line is a side lot line per ZDO Section 202, *Definitions*. Table 513-2 in ZDO Section 513, *Rural Commercial Zoning Districts*, provides that the side yard setback standard is 10 feet. However, subnote 6 provides that the setback from a property line that abuts a residential zoning district is 20 feet. The adjacent property is zoned Rural Residential Farm and Forest – 5 acre (RRFF-5), which is a residential zoning district. Therefore the 20 foot setback standard applies.

The Variance application was submitted concurrently with a Nonconforming Use Verification/Alteration (NCU). A pre-application conference was held to discuss the nonconforming use application process on October 22, 2021. The NCU application is currently deemed incomplete. The Variance application was deemed complete on March 30, 2022. The applicant submitted a request to “toll the clock” the next day, requesting a tolling until June 6, 2022. The clock was restarted by the applicant on May 11, 2022, with the submittal of additional materials in support of the application. Notice to adjacent property owners and service providers was mailed May 12, 2022.

### Excerpts from Applicant’s discussion of their proposal:

“This application (“Application”) is being submitted to alter two existing sheds located on the northeast corner of the Applicant’s property at 2351 [SW] Borland Road, a Parr Lumber retail store and lumber yard (the “Property”). The Property is zoned Rural Commercial (“RC”). A variance is required to locate the altered shed 10 feet from the side lot line and the Applicant hereby requests a variance from the minimum side setback requirements of ZDO Table 513-2, n.6, which requires a minimum side setback of 20 feet.”

“The two existing sheds are currently used for product storage and are in a state of disrepair. Because of their current state and the length of time the sheds have been on the Property, they have no monetary value and are considered “tear downs.” However, the sheds fulfill an important storage function for the store, which is why they must remain on the Property and be slightly expanded. The Applicant wishes to alter the sheds by reconstructing them to make a single continuous structure larger in size than the two existing sheds, and wishes to keep them in the same location (i.e., within 10 feet of the side lot line). Specifically, the altered shed will be deeper and longer than the two existing sheds and is approximately 125 feet long by 25 feet deep, as shown on the site plan attached hereto as **Exhibit 1**. Photographs and elevations of similar sheds located on other Parr properties are attached as **Exhibit 2**. The Applicant anticipates constructing similar sheds on the Property. The altered shed will continue to be used for product storage, will not increase truck or other vehicle traffic to the store, and will also not increase sales at the retail store on the Property. The altered shed will also continue to be utilized during normal business hours.”

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<sup>4</sup> This decision concerns only the requested variance and does not review or approve the proposed structure.

“The Property is addressed as 2351 SW Borland Road and is specifically identified as Tax Lot ID No. 21E281900. It consists of approximately 3.56 acres and is presently improved with a Parr Lumber retail store and lumber yard, including the two non-conforming sheds.”

“The Property is surrounded by properties that are zoned Rural Residential Farm Forest 5- Acre (“RRFF-5”), which is a residential zoning district. The properties immediately adjacent to the storage sheds to the northeast are undeveloped fields that are 4.68 and 4.78 acres in size. The property to the east is an approximately 6-acre flag lot developed with a home and accessory structures. The properties to the west and southwest are separated from the Property by SW Borland Road, are both developed with what appear to be homes and accessory structures, and are heavily wooded in the areas closest to the Property (adjacent to SW Borland Road).”

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## SECTION 2 – ZDO SECTION 1205 VARIANCES

Section 1205 is adopted to provide standards, criteria, and procedures under which a variance to a dimensional standard of this Ordinance may be approved. However, a variance is prohibited to the following dimensional standards:

- A. The minimum lot size standards in the RA-2, RR, FU-10, EFU, TBR, and AG/F Districts;
- B. The minimum lot size standard or, in the case of a flexible-lot-size or planned unit development, the minimum average lot size standard if the variance would result in reducing the minimum by more than 10 percent. Subsection 1205.01(B) is not applicable to partitions of lots of record that are divided by a public road;
- C. The 20-acre minimum lot size standard inside the Portland Metropolitan Urban Growth Boundary in the RA-1, RA-2, RRFF-5, FF-10, RC, and RI Districts;
- D. The fuel-free break standards of Subsection 406.08;
- E. The maximum building floor space standards in the MRR, RTC, RC, and RI Districts;
- F. Standards applicable in the CI District pursuant to Subsections 601.08(C) through (F); and
- G. Dimensional standards established in Sections 703 through 710, 712, and 713.

***Finding:*** *The applicant is requesting a reduction of side yard setbacks for an open air storage facility. The property is not in the Portland Metropolitan Urban Growth Boundary. The applicant is not applying for a variance to a dimensional standard listed in ZDO Sections 703 through 710, 712, or 713. The appellant points to dimensional restrictions in the ZDO limiting maximum building floor area to 3,000 square feet. Ms. Nesbitt and Mr. Gaon point to the exception to this limitation, providing that a lawfully established commercial use that existed on December 20, 2001 may expand to occupy up to 25 percent more building floor space than was occupied by the use on December 20, 2001. I will state here that I agree with the interpretation by the County and Mr. Gaon that the intergovernmental agreement cited by the appellants does not require that the County’s ZDO remain static to the March 3, 2010 date of adoption or prevent the County from*

*amending the ZDO as it has done. Rather, the agreement restricts allowing any new uses or any smaller land sizes within the designed Urban Reserve Area. This application involves neither. I also note here that my findings do not depend upon this interpretation as I reach the exact same conclusion upon review of the relevant County ordinance in effect at the time the intergovernmental agreement was made. I find that approval of this variance would not result in a change to the maximum building floor space standards in the RC District, or fall outside the relevant standards. The existing building floor space on the site is in excess of 16,000 square feet. The removal and replacement of the two smaller sheds with a single larger shed must not result in a net increase outside the restrictions imposed by this standard. However, given the facts of this matter I find no reason why the applicant's proposal cannot meet these dimensional standards. The exact increase will be determined through the design review process for the new proposed shed and will be required to fall within these standards. The hearings officer concurs with the Planning Director's determination that this criterion is satisfied.*

**ZDO Section 1205.02 Approval Criteria:**

A variance to a dimensional standard of this Ordinance requires review as a Type II application pursuant to Section 1307 Procedures and shall be subject to the following standards and criteria:

- A. If the proposed variance is to any of the following standards, it shall not reduce the minimum by more than 10 percent; however, the 10-percent limit does not apply to the partition of a lot of records that is divided by a public road:
  - 1. Minimum lot size;
  - 2. Minimum average lot size; and
  - 3. District land area.

*The hearings officer finds that the proposed variance is not to any of these standards.*

- B. Compliance with the applicable requirement or standard of this Ordinance would create a hardship due to one or more of the following conditions:
  - 1. The physical characteristics of the land, improvements, or uses are not typical of the area. When the requested variance is needed to correct an existing violation of this Ordinance, that violation shall not be considered as a condition "not typical of the area."

***Finding:** The applicant provides that the property is unique due to the fact that there are only two properties zoned Rural Commercial in the area, and that this is the only commercial use that requires extensive storage of materials. The response points to the use, specifically the siting of storage sheds and racks, as the unique factor creating a hardship if the 20 foot setback standard were to be met.*

*Staff review verifies that there are no other lumber retail sites in the area, and the only other Rural Commercially zoned property within ½ mile is the Wanker's Corner bar and grill and Country store. While the applicant did not specifically state that the build out of the property is developed in a manner that will not allow a covered storage area to be sited if the standard is met, Staff finds that the physical improvements of the property, which are derived from the need of the entity to store large amounts of a needed building*



material, creates a situation whereby there is not enough room to site the proposed structure outside of the required setbacks. Large racks are situated throughout, with drive aisles separating them in a way that allows a forklift or other equipment to access the materials safely. There is also a component of area for loading and deliveries, identified in previous Design Review Approvals (Z0313-92-D, Z0255-97-D, Z0444-05-D). Staff finds that the physical characteristics of the land, improvements, or uses are not typical of the area.

**The exhibits submitted in this matter, including the applicant's site plan and aerial photographs of the site, show the property is completely developed with a large building and existing storage racks fairly evenly spaced to allow equipment to access the stored materials. Appellant suggests that the Parr Lumber property is large enough to accommodate the new shed without a variance. The existing two storage sheds applicant proposes to replace are shown partially within the 20 foot setback area and there is no apparent room on the site to replace the sheds in a different location. The location of the two existing sheds, however, is large enough to accommodate a somewhat larger shed consistent with those shown in use at other Parr Lumber sites if the variance to the setback allowed placement of the shed at the 10-foot depth allowed for all of the adjacent properties. Thus, strict adherence to the 20 foot setback that appears to uniquely affect this property due to the adjacent residential property, while other properties in the vicinity are not similarly affected, would prevent replacement of the existing sheds. The hearings officer concurs with the Planning Director's determination that this criterion is satisfied.**

2. The subject property cannot be developed to an extent comparable with other similar properties in the area if the standard is satisfied.

**Finding:** *The applicant provides that the subject property is the only property with a 20 foot accessory setback requirement as almost every other property in the area, including the properties that abut the subject property, are zoned RRFF-5 and have a 10 foot side yard setback for accessory structures. The applicant provides that a similar use allowed in the RRFF-5 zoning district could build up to that 10 foot setback. There are not development standards for the size of an accessory building or lot coverage standards in the RRFF-5 zone. The property adjacent to the northeast property line could build the exact same structure, or a larger one for that matter, for storage of farm equipment at the 10 foot setback without the need for a variance. While an adjacent property could not conduct the same retail or commercial uses, a neighboring property could build the same level of accessory storage buildings because the zoning code does not provide a maximum lot coverage requirement and does not limit the number of accessory structures. Staff finds that the property cannot be developed to an extent comparable with other properties in the area if the standard is satisfied.*

**The hearings officer concurs with the Planning Director's determination that this criterion is satisfied.**

3. The subject property is an Urban Low Density Residential, RA-1, RRF-5, FF-10, or HR District, the requested variance is to the minimum lot size standard, and more than 50 percent of the lots of record that are within one-half mile of the subject property and located in the same zoning district as the subject property are smaller than the minimum lot size standard.

***Finding:*** *The applicant is not requesting a variance to the minimum lot size or minimum average lot size. The hearings officer concurs with the Planning Director's determination that this criterion is not applicable.*

4. Compliance with the standard would eliminate a significant natural feature of the property.

***Finding:*** *The applicant did not address this criterion; however, the applicant is not required to satisfy this criterion if another criterion in 1205.02 can be met. The hearings officer concurs with the Planning Director's determination that this criterion is not applicable.*

5. Compliance with the standard would reduce or impair the use of solar potential on the subject property or adjacent properties.

***Finding:*** *The applicant did not address this criterion; however, the applicant is not required to satisfy this criterion if another criterion in 1205.02 can be met. The hearings officer concurs with the Planning Director's determination that this criterion is not applicable.*

- C. Strict adherence to the dimensional standard is unnecessary because the proposed variance from the standard will reasonably satisfy all the following objectives:

1. Will not adversely affect the function or appearance of the development and use on the subject property.

***Finding:*** *The applicant provides that the use of the property will not change, but instead the use will be enhanced by the variance. By applying a reduced setback, the applicant argues that the appearance of the parcel will be improved by siting needed storage to the rear of the property. The applicant points to the existing open air sheds, stating that replacing the dilapidated structures will also improve the appearance of the property.*

*Staff finds that the addition of the open air covered storage area can only be sited in the proposed location due to existing development of the site. Adjacent site development includes rows of storage areas that must be spaced at specific widths to allow for safe maneuvering and access of fork lifts and other types of machinery. Staff finds that reducing the setbacks for the siting of open air storage along the northeastern portion of the property will not adversely affect the function or appearance of the development and use on the subject property. The hearings officer concurs with the Planning Director's determination that this criterion is satisfied.*

2. Will not impose limitations on other properties and uses in the area, including uses that would be allowed on vacant or underdeveloped properties.

**Finding:** *The applicant provides that reducing the setback from 20 feet to 10 feet will not have an adverse impact on adjacent properties. Per the submitted narrative, site plan, and photographs, the shed will be buffered from adjacent properties with vegetated screening.*

*The intent of the 20 foot setback standard is to reduce impacts from a commercial use on surrounding residential communities. In this case, the proposed variance is along the northeast property boundary. The abutting parcel is zoned RRFF-5.*

*The zoning allows for a single family dwelling as an outright allowed use on the adjacent RRFF-5 property. As described above, the property is not restricted by lot coverage or size and location of accessory buildings. The proposed structure is not large enough to create solar interference. The maintenance of a vegetated buffer will help ensure that noise, dust, and vibrations are reduced. Additional paved areas for circulation are not proposed, and the proposed structure will replace an existing structure that has been in use since at least 1994. While no building permit for that structure has been found, it still indicates that the use has been ongoing for some time. Staff finds that approval of the variance will not impose limitations on other properties and uses in the area, including uses that would be allowed on vacant or underdeveloped properties. **The hearings officer concurs with the Planning Director's determination that this criterion is satisfied.***

3. Will result in the minimum variance needed to alleviate the hardship.

**Finding:** *The applicant submittal provides that the property is unique and cannot be developed without a reduced setback. Due to the physical characteristics identified and discussed in Subsection 1205.02(A)(1), the property cannot be developed with a storage area of the size proposed without a variance.*

*The size of the structure is also important to this criterion, as reducing the size of the shed would then also reduce the required variance. The storage shed will be used to store lumber products in conjunction with the onsite retail store. Per the submitted site plan, the shed will be 25' X 125', with an open side facing the drive aisle to the east. Given the need to provide covered storage of lumber materials sensitive to the elements, Staff finds that the storage structure is reasonable for the proposed uses of storing lumber materials.*

*The only area buildable for a shop is on the northeast of the property. The area behind and to the south side of the retail store is covered by improvements, including storage racks, vehicular and equipment circulation, and loading and delivery areas. In front of the store is customer parking, and an open air storage shed would not meet the requirements for building design found in ZDO Section 1005. Therefore, the shop can only be sited in the northeast corner of the property.*

*Staff finds that the variance requested is the minimum necessary to alleviate the hardship. **The hearings officer notes that the requested variance references the submitted site***

*plan proposing a 25' X 125' shed. Approval of this variance will allow for the placement of this shed within the 20 foot side setback but not within the area comprising the 10 foot side setback required of adjacent properties and does not allow for the placement of other structures within this setback area. Therefore, the hearings officer concurs with the Planning Director's determination that this criterion is satisfied.*

**Consistency of the proposed variance with the applicable goals and policies of the Comprehensive Plan:**

***Finding:*** *The subject property has a "Rural Commercial" Comprehensive Plan designation. The proposed project and site are subject to Chapter 4, Land Use, of the Comprehensive Plan. Chapter 4 identifies the type of properties appropriate for Rural Commercial designation, specifically those with a historic dedication to commercial use and should provide for commercial uses that are necessary for, and on a scale commensurate with, rural development. A long standing lumber retail center is deemed to be necessary, and at this scale is commensurate with rural development Staff finds that the proposed variance is consistent with the applicable goals and policies of the Comprehensive Plan. **The hearings officer concurs with the Planning Director's determination that this criterion is satisfied.***

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**SECTION 3 – CONDITIONS OF APPROVAL**

**The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. It shall be the responsibility of the property owner(s) to comply with the limitation of any approval resulting from the decision described herein.**

The Clackamas County Land Use and Zoning staff recommended approval of this permit application for a variance subject to the following conditions, consistent with the original June 16, 2022 decision approving this application, reviewed, adopted and/or modified by the Hearings Officer:

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on March 9, 2022 and additional documents submitted on May 11, 2022. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the decision described herein.
2. Approval Period & Renewal: Approval of this Variance and Steep Slope Review applications is valid for four (4) years from the date of the final written decision. During this four year period, the approval shall be implemented, or the approval will become void. Implemented

means that the final plat of the partition or subdivision shall be recorded with the County Clerk. (ZDO1205.03(A))

- a. If the approval of a variance is not implemented within the initial approval period, a two-year time extension may be approved pursuant to Section 1310, *Time Extension*.
3. Approval is **only** for a reduction of the side yard setback from the eastern portion of the north side property line to 10 feet as shown on the applicant's May 11, 2022 site plans. Substantial changes to the grading or development plan will require a modification or a new application.
4. Prior to issuance of a building permit: The proposal shall obtain approval for a Design Review Application, pursuant to Zoning and Development Ordinance Section 1102. Alternatively, the applicant may submit evidence approved by the Planning Division to the file that the project is not subject to Section 1102.
5. The proposed structure is subject to Design Review and must comply with dimensional standards of ZDO Section 513.04. The footprint of the proposed structure may need to be reduced in order to comply with Table 513-2 (subnote 8) with the maximum building floor space per commercial use outside of an unincorporated area. Compliance with ZDO Table 513-2 will be determined as part of the Design Review application.

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### **C. DECISION**

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0117-22-V, subject to conditions of approval.

Dated: August 22, 2022



Carl D. Cox  
Clackamas County Hearings Officer

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### **APPEAL RIGHTS**

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision is "final" for purposes of a LUBA appeal as of the date of the decision appearing by my signature.